

BUYING PROPERTY IN SOUTH AFRICA

South Africa has one of the best Deeds Registries Systems in the world, which makes it very safe to purchase and sell property in this country.

The Estate Agent is involved extensively whilst choosing a property and concluding a Deed of Sale. Once you find a suitable property, the Agent will prepare an Offer to Purchase, which is open for acceptance by the Seller for a certain period of time. The Purchaser is not allowed to withdraw the offer in the stipulated period, and if the offer is accepted by the Seller, it becomes a binding Contract for the sale and purchase of the property.

One of the most important issues for the foreign buyer is the tax implications of purchasing a property in South Africa. The following will be payable on the purchase and sale of the property:

1. Transfer duty payable prior to registration, which amount is calculated on the purchase price of the property;
2. Property rates and taxes, payable monthly or yearly, which amount is also calculated on the purchase price of the property and a portion of which needs to be paid in advance before registration to obtain a rates clearance;
3. Capital Gains Tax, calculated on the capital gain or profit once the property is sold. As from 1 September 2007, the Purchaser is liable to pay withholding tax to the Receiver of Revenue on a percentage of the proceeds under certain circumstances. Please see our Newsflash on Non Residence should you require more information in this regard.

The purchase of the property can be financed by obtaining a loan from a Financial Institution in South Africa, which loan will be secured by a First Mortgage Bond to be registered over the property when the property is transferred. Due to the Reserve Bank's exchange control requirements, a foreigner can only obtain a loan for 50% of the value of the property, and not 100% like a South African citizen. If you require such a loan to be able to finance the property, a suspensive condition will be inserted in the contract making the sale of the property subject to the loan being granted. In the event that the application for the loan is unsuccessful, the contract shall expire and become null and void.

Once the contract is finalized, the Seller appoints a Conveyancing Attorney that will attend to the registration of the transfer of the property and the Mortgage Bond. The transfer process in short, involves the following steps:

1. Once the suspensive condition is fulfilled and the bond registration instruction is received, the transfer documents and the Bond Documents are drawn for signature by the Seller and the Purchaser. Should you wish to leave the country during this time, it is a good idea to appoint an attorney by means of a *Special Power of Attorney* to sign the documents on your behalf in order to avoid the strict signature requirements in the event of the documents having to be signed outside of the country.
2. The Bond Cancellation instruction, for the cancellation of the Seller's Mortgage Bond registered over the property is also applied for at this stage. This instruction will contain the Title Deed of the property, which was held as security by the Financial Institution for the loan that was granted.
3. Once the documents are signed and the transfer costs paid, the Conveyancing Attorney will pay the transfer duty and the property rates and taxes required in advance, in order to obtain the transfer duty receipt and the rates clearance;
4. Once the transfer duty receipt, rates clearance, and Bond Cancellation Instruction are received, the Conveyancer can draft the new Title Deed in the Purchaser's name, and the transfer, bond registration and bond cancellation can be lodged in the Deeds Office.
5. The Deeds Office process takes 8 to 10 working days, where after the property is registered in the Purchaser's name.

Steps 1 to 5 take approximately 2 months, but delays can be expected should documents need signature over seas.

As a South African citizen is only allowed to take R2,000,000.00 out of the country in a life time, the Conveyancer attends to the endorsement of the Title Deed as "Non Resident" in the event of a cash transaction before it is delivered to the new Purchaser. This step is taken to expedite the transfer of the proceeds of the sale of the property off shore once the new Purchaser decides to sell the property.